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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
E-5 ID#2223
RESOLUTION G-3352
June 19, 2003

R E S O L U T I O N

Resolution G-3352. Southern California Gas Company (SoCalGas) requests authorization to revise its three existing standard form contracts and to establish a fourth new standard form contract. The three existing contracts are:

- 1) Master Services Contract, Form 6597 - Section 1 to 6 (MSC)
- 2) Master Service Contract, Schedule A, Intrastate Transmission Service, Form 6597-1 (Schedule A)
- 3) Amendment to Master Services Contract Schedule A, Intrastate Transmission Service, Form 6597-9 (Amendment to MSC).

The fourth new standard contract will be titled Master Services Contract, Schedule A, Transportation Service Addendum, Form 6597-21 (Transportation Addendum).

By this resolution, SoCalGas' request is approved, with modification in Schedule A – Section 1.B.3, and with the exception of revised MCS - Section 6, which is denied, without prejudice.

By Advice Letter (AL) 3194, filed on October 4, 2002

SUMMARY

As filed in AL 3194 on October 4, 2002, this resolution approves SoCalGas' request to revise its MSC - Section 1 to 5; its Schedule A, with modification in Section 1.B.3; its Amendment to MSC; and its request to form a new Transportation Addendum contract. Approval of MSC- Section 1 to 5, Schedule A, with modification in Section 1.B.3, and Amendment to MSC would improve clarity and customer understanding of its obligation. Additionally, forming a new standard Transportation Addendum contract would help customers simplify the process of changing marketers or agent services.

To clarify SoCalGas' request to add the language in Schedule A – Section 1.B.3, SoCalGas shall modify its proposed language to the following:

Billing Schedule Sequences for terms less than the initial term of this Agreement may be amended or renewed upon expiration as permitted or required in the applicable Tariffs on file with the CPUC. In the event any such Billing Schedule Sequences are not amended or renewed by the Customer, an available Tariff Service that allows a month term may be provided.

This would allow SoCalGas to select a Tariff Service with a month-to-month term for a customer if the customer fails to elect an available Tariff Service once a Billing Schedule Sequence has expired. If that customer is not satisfied with SoCalGas' Tariff selection in its Billing Schedule Sequence, then the customer still has the right to amend that sequence and select an available Tariff Service for which the customer qualifies. Tariff Service with more than a month term can still be provided upon the customer's action to elect an available Tariff Service.

SoCalGas' request to revise its MSC – Section 6 is denied, without prejudice. The proposed revision of MSC – Section 6 may prevent a debtor in possession or trustee in bankruptcy from forcing SoCalGas to continue providing credit to an insolvent entity or to force an assignment of the MCS to a third party. This resolution is not the proper forum to address the issue of Bankruptcy Code Section 365.

BACKGROUND

SoCalGas filed AL 3194 to revise its three existing standard form contracts and to propose a fourth new standard form contract. The purpose of these contracts is to: 1) establish customer service elections under SoCalGas' authorized tariffs applicable to noncore customers, and 2) establish service elections under applicable core tariffs when such service is provided in conjunction with noncore service. The three existing contracts include:

- 1) the MSC,
- 2) Schedule A, and
- 3) the Amendment to the MSC.

SoCalGas is also proposing the Transportation Addendum as its fourth new standard form contract.

SoCalGas claims the revisions to its three existing standard contracts are administrative changes and will improve clarity and customers' understanding of their obligations.

In the revision of the MSC, SoCalGas proposed to: 1) eliminate information no longer relevant to the agreement, 2) remove certain outdated descriptions of applicable services, and 3) revise contract provisions which are better incorporated by reference to the Commission-authorized Tariff Rules and Rate Schedules.

In the revision of Schedule A, SoCalGas proposed to: 1) add a mechanism for SoCalGas to continue customer service under an applicable tariff if the customer fails to select or continue a tariff schedule once the shorter-term schedule expired, 2) eliminate duplicate information or text references, which are no longer necessary, and 3) relocate body text such as the Order Control Code, G-IMB imbalance charges, and Agent or Contracted Marketer information to a new standard contract form called the Transportation Addendum. Since customers often change their marketer or agent service, the new standard Transportation Addendum would allow a simple process for a customer to change its marketer or agent service.

In the revision of the Amendment to the MSC, SoCalGas proposed to clarify the expiration date for the Schedule A Billing Schedule.

SoCalGas concludes the AL filing is an administrative changes and it will not:

- result in an increase or decrease in rate or charge,
- conflict with any rate schedule or rules, or
- cause withdrawals of service

NOTICE

Notice of AL 3194 was made by publication in the Commission's Daily Calendar. SoCalGas states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Southern California Generation Coalition (SCGC) filed a protest on October 28, 2002 and a supplement to its protest on October 31, 2002. SCGC requests that the Commission withdraw the changes made in MSC – Section 6, Schedule A – Section 1.B.3, and Amendment to MSC – Section 2. SCGC believes the changes may directly cause a withdrawal of service. SoCalGas responded to SCGC’s protest on November 4, 2003.

MSC – Section 6 (Form 6597)

SCGC protests a new legal provision in MSC - Section 6. SCGC believes the proposed provision may increase the creditworthiness burden on customers. SoCalGas’ proposed provision is as follows:

In addition, the parties agree that the services to be rendered by Utility under each Schedule constitute the provision by Utility of a financial accommodation by Utility to Customer within the meaning of section 365(c)(2) of the Bankruptcy Code, 11 U.S.C. §365(c)(2), and the transactions entered into pursuant to each Schedule are “forward contracts” as defined in section 101 of the Bankruptcy Code, 11 U.S.C. §101. Nothing in this MSC shall be construed as preventing Utility and Customer from mutually agreeing to conditions which are more stringent than set forth in the Tariffs.

SCGC says the proposed provision is not found elsewhere in SoCalGas standard contracts and it does not appear to be in the standard contracts of other regulated utilities. Furthermore, SCGC believes SoCalGas failed to explain the purpose of the proposed provision.

In SCGC’s supplement, SCGC points out that the proposed provision to MSC – Section 6 would give SoCalGas an advantage over other creditors and over the customer, in the event the customer files for bankruptcy protection. Defining the utility’s service as a “financial accommodation” under Bankruptcy Code Section 365 (c)(2) would restrict the bankruptcy trustee to assume or assign the contract to a third party.

In SoCalGas’ reply comment, SoCalGas believes that clarifying MSC – Section 6 agreement as a “financial accommodation” within the meaning of the

Bankruptcy Code would “prevent a trustee in bankruptcy from assuming or assigning the MSC in contravention of the no-assignment clause in the MSC without SoCalGas’ consent.”

SCGC also claims that labeling MSC – Section 6 as a “forward contract” under Section 101 of the Bankruptcy Code, 11 U.S.C. §101 may:

1. allow SoCalGas to more easily seize any collateral or financial assurance mechanisms and would diminish the customer’s right to temporarily protect those assets under the automatic stay in bankruptcy under 362(b)(6) of the Bankruptcy Code, 11 U.S.C.
2. create a difficult situation for the customer to reorganize its business in bankruptcy.
3. entitle SoCalGas greater rights than other creditors to liquidate the contract or to receive partial payment from the contract under Section 556 of the Bankruptcy Code 11 U.S.C. §556.

SCGC stated that “forward contract” is defined under Bankruptcy Code, 11 U.S.C. §101 (25) as a “contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity....” SCGC points out that although the MSC involves sale of a commodity, the larger purpose is to supply gas services, including transportation and storage.

In SoCalGas’ reply comment, SoCalGas believes that labeling MSC – Section 6 as a “forward contract” would protect SoCalGas from the automatic stay provision of the Bankruptcy Code (11 U.S.C. Section 362).

SoCalGas states that the purpose of this provision is:

... to prevent a debtor in possession or trustee in bankruptcy from forcing SoCalGas to continue to extend credit to an insolvent entity or to force an assignment of the MSC and the credit accommodations that are embodied in the MSC to a third party that might not otherwise qualify financially for such credit accommodations.

Schedule A – Section 1.B.3 (Form 6597-1)

SCGC protests certain added language in Schedule A - Section 1.B.3. The added language to Schedule A – Section 1.B.3 is as follows:

Billing Schedule Sequences for terms less than the initial term of this Agreement may be amended or renewed upon expiration as permitted or required in the applicable Tariffs on file with the CPUC. In the event any such Billing Schedule Sequences are not amended or renewed, service under any expired Sequences may be provided under an otherwise applicable or available Tariff Service.

In a Billing Schedule Sequence, a customer could contract a specific amount of its monthly load to be served under an elected Tariff Service. At the same time, a customer can also contract another incremental, portion of its load to be served under another elected Tariff Service. The terms of the two Tariff Services may end on different dates. When the shorter-term schedule of the Tariff Service ends, a customer could then amend or renew the applicable Tariff.

SCGC believes the added language to Schedule A – Section 1.B.3 would allow SoCalGas to use the expiration of the Billing Schedule Sequence to shift a customer's rate schedule to another. SCGC believes shifting a customer from one rate schedule to another upon expiration of a Billing Schedule Sequence should be subject to Commission review and approval.

In SoCalGas' reply comment, SoCalGas explains that when the term of any Billing Schedule Sequence ends, a customer must select an available service at that time. In the event that a customer does not take action to select an available service, then SoCalGas would select an available service to continue the contract.

Amendment To MSC – Section 2 (Form 6597-9)

SCGC protests the termination date added in Amendment to MSC – Section 2. SCGC believes the termination date would permit SoCalGas to terminate service to a customer without Commission approval. The termination date added in Amendment to MSC – Section 2 is as follows:

The following billing schedule(s) shall be effective on the _____ day of _____ and shall terminate on the _____ day of _____

_____, or if not specified, upon written notice from one party to the other given not less than twenty (20) days prior to the last day of the month.

In SoCalGas' reply comment, SoCalGas asserts that the Commission has approved similar language in the Master Services Contract, Schedule A, Intrastate Transmission Service agreement (Section B):

At the end of the initial term, this Agreement shall continue thereafter on a month to month basis unless terminated by written notice from one party to the other given not less than twenty (20) days prior to the last day of the initial term or any month thereafter.

SoCalGas notes that it is unusual for any contract not to contain provisions for its termination, and believes the termination or expiration in an agreement or amendment does not constitute withdrawal of service.

DISCUSSION

The Commission has reviewed the MSC, Schedule A, the Amendment to MSC and the Transportation Addendum.

MSC (Form 6597)

In its revision of the MSC, SoCalGas proposed to:

- 1) eliminate information no longer relevant to the agreement,
- 2) remove certain outdated descriptions of applicable services, and
- 3) revise contract provisions, which are better incorporated by reference to the Commission-authorized Tariff Rules and Rate Schedule.

The Commission finds that the administrative changes in MSC - Section 1 to 5 are reasonable.

SCGC protested the following proposed provision in MSC - Section 6:

In addition, the parties agree that the services to be rendered by Utility under each Schedule constitute the provision by Utility of a financial accommodation by Utility to Customer within the meaning of section 365(c)(2) of the Bankruptcy Code, 11 U.S.C. §365(c)(2), and

the transactions entered into pursuant to each Schedule are “forward contracts” as defined in section 101 of the Bankruptcy Code, 11 U.S.C. §101. Nothing in this MSC shall be construed as preventing Utility and Customer from mutually agreeing to conditions which are more stringent than set forth in the Tariffs.

SCGC believes the provision inserted into MSC - Section 6 would increase the creditworthiness burden on customers. Defining the utility’s service as a “financial accommodation” under Bankruptcy Code Section 365 (c)(2) would restrict the bankruptcy trustee to assume or assign the contract to a third party.

SoCalGas believes the provision would prevent a customer in bankruptcy from forcing SoCalGas to continue to extend credit to an insolvent entity or to force the MSC to a third party that might not otherwise be qualified for such financial credit accommodations.

The Commission believes that an AL filing is not a proper venue for addressing such issues. Bankruptcy is a complex issue and is better addressed in other procedural venues. The proposed revision to MSC - Section 6 is denied, without prejudice.

Schedule A (Form 6597-1) and Transportation Addendum (Form 6597-21)

SoCalGas proposed to add the following language in its Schedule A - Section 1.B.3:

Billing Schedule Sequences for terms less than the initial term of this Agreement may be amended or renewed upon expiration as permitted or required in the applicable Tariffs on file with the CPUC. In the event any such Billing Schedule Sequences are not amended or renewed, service under any expired Sequences may be provided under an otherwise applicable or available Tariff Service.

In a Billing Schedule Sequence, a customer could contract a specific amount of its load to be served under an elected Tariff Service. At the same time, that customer could also contract another portion of its load to be served under another elected Tariff Service. Customers may even arrange to have more than two different Tariff Services. For example, a customer may have contracted under two Billing Schedule Sequences, and selected an incremental portion of its

load to be served from a core service contract with a five-year term and selected another portion of its load to be served from a noncore firm transportation service contact with a two-year term.

	Tariff Service	Term	Loads
Sequence 1	Core Service	5 year term	5,000
Sequence 2	Noncore Firm Transportation Service	2 year term	2,000

The terms of the Tariff Services would end on different dates. When the shorter-term schedule of these Tariff Services ends, such as Sequence 2, a customer has the right to amend Sequence 2 in order to select another available Tariff Service or to renew the applicable Tariff.

In the language added in Schedule A – Section 1.B.3, SoCalGas proposed to continue service under an applicable Tariff if the customer fails to select or continue a Tariff Service once the shorter-term schedule expires.

SCGC, protested the language added in Schedule A - Section 1.B.3. SCGC believes SoCalGas should not be allowed to use the expiration of a Billing Schedule Sequence to change a customer rate schedule from one to another without Commission approval.

The Commission believes the customer still has the right to select an available Tariff Service once a Billing Schedule Sequence has expired. Only if a customer fails to select an available Tariff Service once its Billing Schedule Sequence has expired, then it would be reasonable for SoCalGas to select a Tariff Service with a month-to-month term. If a customer is not satisfied with SoCalGas' Tariff selection in its Billing Schedule Sequence, then the customer still has the right to amend that sequence and select an available rate schedule for which the customer qualifies (at the end of the next monthly term). Tariff Service with more than a month term can still be provided upon the customer's action to elect an available Tariff Service. This does not take away customer options to select available Tariff Service.

To clarify the language added in Schedule A – Section 1.B.3, SoCalGas should modify its proposed language as follows:

Billing Schedule Sequences for terms less than the initial term of this Agreement may be amended or renewed upon expiration as

permitted or required in the applicable Tariffs on file with the CPUC. In the event any such Billing Schedule Sequences are not amended or renewed by the Customer, an available Tariff Service that allows a month term may be provided.

SCGC's protest is denied.

In addition to adding Section 1.B.3 in Schedule A, SoCalGas proposed to eliminate duplicate information or text references, and to relocate body text such as the Order Control Code, G-IMB imbalance charges, and Agent or Contracted Marketer information to a new standard contract form called the Master Services Contract Schedule A, Transportation Service Addendum (Transportation Addendum). Since customers often change their marketer or agent service, the new standard contract form would allow a simple process for customers to change their marketer and agent services.

The Commission finds the revision to Schedule A to be reasonable, with a slight modification in Section 1.B.3., and the new standard Transportation Addendum to be reasonable.

Amendment to MCS (Form 6597-9)

SoCalGas proposes to add a termination date in its Amendment to MSC Schedule A:

The following billing schedule(s) shall be effective on the _____ day of _____ and shall terminate on the _____ day of _____, or if not specified, upon written notice from one party to the other given not less than twenty (20) days prior to the last day of the month.

SCGC believes that SoCalGas should not be permitted to abandon service without first obtaining approval from the Commission.

SoCalGas notes that it is unusual for a contract not to contain provisions regarding its termination and believes that the termination or expiration of an agreement or amendment does not constitute withdrawal of service.

The Commission agrees with SoCalGas that the language is not considered an abandonment of service. It is just an expiration of the existing contract. Therefore, SCGC's protest to Amendment to MSC Schedule A is denied.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on [date]. Comments were due no later than [date], and reply comments were due no later than [date]

FINDINGS

1. SoCalGas filed AL 3194 on October 4, 2003 for Commission approval to revise its MSC, its Schedule A, and its Amendment to MSC, and to form a new Transportation Addendum contract.
2. SCGC filed a protest on October 28, 2002 and a supplement on October 31, 2003. SCGC requests the Commission to deny the revision in MSC – Section 6, Schedule A – Section 1.B.3, and Amendment to MSC – Section 2.
3. SoCalGas responded to SCGC's protest and supplement on November 4, 2003.
4. The proposed provision to MSC – Section 6 may prevent a debtor in possession or trustee in bankruptcy from forcing SoCalGas to continue extending credit to an insolvent entity or to force an assignment of the MSC to a third party.
5. Bankruptcy is a complex issue and is better address in other proceedings.
6. This resolution is not the proper forum to address bankruptcy issues.
7. The proposed provision to MSC - Section 6 should be denied, without prejudice.
8. The administrative changes to MSC - Section 1 to 5, are reasonable.
9. Under the added language in Schedule A – Section B.3, if a customer fails to select an available Tariff Service once its Billing Schedule Sequence has expired, then SoCalGas should select an available Tariff Service that allows a month term. If a customer is not satisfied with SoCalGas' Tariff selection

in its Billing Schedule Sequence, then the customer still has the right to amend that sequence and select an available rate schedule for which the customer qualifies. Tariff Service with more than a month term can still be provided upon customer's action to elect an available Tariff Service.

10. The added language in Schedule A – Section B.3 does not take away customer options to select available schedule. It provides SoCalGas a mechanism to continue service under an applicable Tariff if the customer fails to select or continue a Tariff Service once the shorter-term schedule expired. Customers still have the right to select an available schedule once a Billing Schedule Sequence has expired.
11. For clarification, SoCalGas' request to add language in Schedule A – Section 1.B.3 should be modified.
12. Under the Amendment to MSC – Section 2, the termination or expiration date in an agreement or amendment does not constitute withdrawal of service.
13. Under the Amendment to MSC – Section 2, it is reasonable to add the termination or expiration date in an agreement or amendment.
14. Since customers often change their marketer or agent, the new standard Transportation Addendum would allow a simple process for customer to change its marketer or agent.
15. It is reasonable to form a new standard Transportation Addendum.

THEREFORE IT IS ORDERED THAT:

1. SoCalGas' request to revise its MSC - Section 1 to 5 is approved.
2. SoCalGas' request to revise its MSC - Section 6 is denied, without prejudice.
3. SoCalGas' request to revise Schedule A is approved, with modification in Section 1.B.3.
4. SoCalGas' request to revise the Amendment to MSC is approved.
5. SoCalGas' request to establish a new standard Transportation Addendum is approved.
6. SCGC's protest related to MSC – Section 6 is granted.
7. SCGC's protest related to Schedule A – Section B.3 is denied.
8. SCGC's protest related to Amendment to MCS - Section 2 is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 19, 2003; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director